

TRANSCRIPT OF THE MEETING OF THE  
COLLIER COUNTY HEARING EXAMINER  
NAPLES, FLORIDA  
SEPTEMBER 23, 2021

LET IT BE REMEMBERED, that the Collier County Hearing Examiner, in and for the County of Collier, having conducted business herein, met on this date at 9:00 a.m., in REGULAR SESSION at 2800 North Horseshoe Drive, Room 609/610, Naples, Florida, with the following people present:

HEARING EXAMINER ANDREW DICKMAN

ALSO PRESENT:

Andrew Youngblood, Operations Analyst Zoning Division  
John Kelly, Principal Planner  
Tim Finn, Principal Planner  
Raymond V. Bellows, Zoning manager

THE HEARING EXAMINER: All right. Good morning everyone; a little bit delayed here. Thank you for your patience. My name is Andrew Dickman. I'm the Hearing Examiner. Today is September 23rd, 2021. We have four items -- advertised items, actually one, two, three, four, five actually. Let's get started first and foremost with the Pledge of Allegiance.

(Pledge of Allegiance was said.)

THE HEARING EXAMINER: Okay. Thank you very much for that. Just a couple of quick housekeeping items. First of all, as I stated, I'm Andrew Dickman. I'm a hearing examiner. I'm an attorney practicing over 20 years in the area of land use and local government, in good standing with the Florida Bar. I am a contractor with the County. I'm not a County employee. I'm here to fairly hear the evidence, look at all the information, and render a decision on any of the petitions that are before me within 30 days, so I will not make any formal rulings here today. They will be taken under advisement, although the material, I'll look at it and render a decision.

If everyone can make sure that all your phones and things, sometimes I'm guilty of it, are -- the ringers are off. If you need to make a phone call, just step outside, there's plenty of room there to do that.

This is a fairly informal proceeding. It's a quasi-judicial proceeding however, but I also want everyone to feel relaxed here. And, you know, some people haven't spoken publicly, that's okay. I tend to get nervous sometimes when I speak publicly, so I just want to hear what you have to say. You know, just do it calmly.

Try to address each issue. Each petition has a criteria that's in the code that I have to follow and while you are entitled under the law to speak here about anything you want, it would help me greatly if you would address the items and address the issues specifically so that I can take that -- I will take notes and so forth; that would be very helpful.

The way that we're going to proceed under these -- each petition is that I'll ask the County -- raise your hand, County. These are all the County professional planners. People that are here, they have all put all of these things on my agenda, I've reviewed them, I'm sure y'all have talked to some of them. They will be presenting the item first. I will ask them to briefly describe it. Also they'll go through the due process part which has to do with the notices, signs, and so forth, mailouts that have to go out. I want to get that on the record and they'll give me their recommendation on the petition.

The parties involved in this hearing are the Applicant and the County. Those are the parties, okay? Then there's everyone else, members of the public.

Now, under the law, there are certain members of the public that may or may not be more affected or interested, quote, unquote, that's the legal term, than others. I am not going to make a ruling on who is more affected than others. I assume that if you're here, you've received notice in some form or fashion and you want to speak on that.

However, in order for me to try to make a ruling on who would be more interested than others, then I would have to investigate all that and I want you to understand I'm here as a neutral decisionmaker. I have not done any prior research into any of these petitions. I have everything that you have that's of public record that has been provided to me, the Staff reports and other things, any letters or anything that's been mailed in, anything that's been made available to the public, I've reviewed.

I haven't done any independent research and I have want to be here strictly to hear expert testimony, evidence, things of that nature, as applied to the criteria, whichever criteria it is that's applicable to the various petitions and be able to evaluate that in terms of whether it meets the criteria or does not meet the criteria; that's kind of a fair assessment of how this is going to go.

Sometimes I get into my professorial role and try to get everybody aware of what we're doing here, but first and foremost, it's really critical, more importantly since I am the decision

maker, to get as much information as possible. This is a quote, unquote, hybrid meeting. Under the circumstances of the pandemic, the County has set up technology so that you can be here in person or you can be here electronically and participate in this meeting.

We do have a court reporter who is standard procedure for taking the verbatim comment -- verbal comments that come forth in this meeting. She today, same one? All right, she is practically in control of this meeting because if she can't hear she is going to probably yell out and say, stop, I can't hear you and then I'm going to stop and we're all going to be guilty of court reporter violation number one and we all have to put a dollar in the cookie jar and donate that some place. I'm joking, but definitely I will stop the hearing if the court reporter can't hear you or if you're making hand gestures or things like that, so try not to do it. Don't speak over each other. You know, just say -- you know, try to -- we have plenty of time. We'll talk this through.

So the middle podium, gray, right in front of me will be used by the County and by members of the public. The big brown one over here will be used by the Applicant and/or the Applicant's representatives. It gives me a good opportunity to see that. We'll have graphics up on the screen here. And, again, there's plenty of opportunity. After the County goes, the Applicant will come up and do their case-in-chief. I'll open it up for public comment and then I'll close the public comment and I will allow the Applicant some time for rebuttal which is really just addressing some things that may have come up in the public speaking, so that's really the procedure that's going to happen.

Having a hybrid meeting requires some technological work and Mr. Youngblood over here, raise your hand, he's also in control of this meeting, so I have really two wonderful people that are helping out and so if you have -- if you want to speak, I think there's speaker cards, but we do need to have anyone who is going to present any testimony to me here today, I need to have you sworn in by the court reporter, so anyone who's going to speak today here on any item that's on the agenda, please stand and raise your right hand and the court reporter will administer the oath.

THE COURT REPORTER: Good morning. Can you hear me okay?

MR. YOUNGBLOOD: Yes, we can hear.

THE COURT REPORTER: Okay. Do you solemnly swear or affirm the testimony you give will be the truth, the whole truth, and nothing but the truth?

(All witnesses were sworn as a whole and answered in the affirmative.)

THE HEARING EXAMINER: Ray, have I covered everything?

MR. BELLOWS: Yes. And we're ready to proceed to the first item.

THE HEARING EXAMINER: Okay. Great. Let's review that again.

MR. BELLOWS: We'd like to announce a continuance of item 3A on your agenda -- 3E, excuse me, 3E is the parking exemption, petition number PL20210000596. We are going to have this re-advertised for the October 14th hearing examiner.

THE HEARING EXAMINER: Okay. So the County is asking for a continuance of that item that was just put into the record. Is anyone here who wants to -- anyone here on that item? Raise your hand. Anybody here to speak on that item?

Okay, so what's going to happen with that item is it will be re-advertised and brought back here before me on -- you mentioned the date which is --

MR. BELLOWS: October 14th.

THE HEARING EXAMINER: Okay. So it's going to be here October 14th, but anyone who's listening, it will be re-advertised which includes posted signs, mailouts, correct? It's continued to a date certain?

MR. BELLOWS: Yes, continued to a date certain.

THE HEARING EXAMINER: Okay, so continued to a date certain. Then I will go ahead and approve that continuance and we'll move on to the next item. Is anything else on the agenda that needs to be addressed?

MR. BELLOWS: No other changes.

THE HEARING EXAMINER: All right. So why don't we just jump right into 3A. This is a PDI petition. Who's handling this today?

MR. BELLOWS: For the record, Ray Bellows. Tim Finn is the assigned planner.

THE HEARING EXAMINER: Welcome, Mr. Finn. How are you today?

MR. FINN: I'm good.

THE HEARING EXAMINER: All right.

MR. FINN: For the record, I'm Tim Finn, principal planner. This is for petition number PDI-PL20210000341, LB Orange Blossom, LLC requests an insubstantial change to Ordinance Number 09-03 the Savannah Place RPUD for, number one, the modification to the PUD master plan to show the slight modification to the developmental layout including modified right-of-way and addition of fence/wall at all PUD boundaries.

Number two, the modification to the minimum front yard setback to allow for a ten-foot front yard setback for single-family detached and attached dwelling types with side-loaded garages.

Number three, the modification to the maximum intensity from 20 to 17 dwelling units.

Number four, the modification to the PUD commitments to incorporate the County's Managing Entity standard language and provide a timing trigger for the proportionate fair share of payment towards the Orange Blossom/Airport Pulling Road intersection improvements.

Number five, a deviation from LDC Section 6.06.01.N, which establishes the minimum right-of-way width of 60 feet to be utilized to allow for a 45-foot right-of-way internal private right-of-way.

Number six, a deviation from LDC Section 6.06.02.A which requires five-foot wide sidewalks to be constructed on both sides of the walk of internal rights-of-way to allow a six-foot wide sidewalk on one side of the right-of-way.

Number seven, a deviation from LDC Section 4.06.02.C.2, which requires Type E buffers to be 15 wide to allow a ten-foot wide Type B buffer along the portion of the eastern boundary abutting the Cay Lagoon PUD.

Number eight, the addition of a development commitment of a four to six-foot tall fence wall to be installed along the southern, eastern, and western property lines and part of an eastern property line as shown on the PUD master plan.

Number nine, the addition of a development commitment of the required yard tree for lots with side-loading dwelling units and a ten-foot front setback shall be small trees planted in groups of two trees.

Furthermore, the project is compliant with the GPM and LDC, therefore Staff recommends approval. The Applicant has complied with all hearing notices by our operations staff.

The advertisements and mailers went out on September 3rd. The hearing advertisement property signs were constructed at the property per the affidavit of posting notice included in Attachment C of the document materials.

THE HEARING EXAMINER: Thank you. All right. So I have a question for you and I really need to get this on the record, so that was -- on my account that's nine -- nine insubstantial changes?

MR. FINN: Yes, that's correct.

THE HEARING EXAMINER: Okay. So under the code, I mean, you put it on my agenda, so individually, they each meet the insubstantial code, but collectively, in your opinion, are they still -- putting them all together, all the changes --

MR. FINN: Yes. Yes.

THE HEARING EXAMINER: -- are they still insubstantial change?

MR. FINN: Yes, they are.

THE HEARING EXAMINER: Okay. So we've got that opinion from the County that it's properly before me, I have jurisdiction over that. You did a very nice job reading all that. I feel bad for you, but you put it on my agenda, so -- all right. So who's the -- is the Applicant here? Come on up. Hi. Your name?

MS. CRESPO: Alexis Crespo with Waldrop Engineering representing the Applicant. And this started as really needing a reduced current setback for a unique product type that the developer is looking to construct in the community. And because this is an older PUD, it did kind of snowball into several changes, but really a lot of it is housekeeping which I'll walk you through in my presentation.

You have the engineering team from Waldrop Engineering as well as Lisa VanDean as the owner of the property.

So Tim did a great job of walking through the list of insubstantial changes to the PUD. We are requesting to reduce the density down from 20 units to 17 units as part of this insubstantial change. We are also proposing some very minor modifications to the layout shown on the PUD master plan, just the alignment of roadway, which I'll show you, as well as some relocation of the storm water management onsite.

The impetus for the petition was to allow for a ten-foot primary setback for a single-family dwelling heights that have a side-loaded garage where the driveway is curved and there's not the need to park within the front-loaded garage scenario, so I'll show you that detail.

We are seeking three new deviations for this infill development to allow for reduced right-of-way width internal to the project, six-foot wide sidewalks on one side of internal rights of way and memorialize the ten-foot wide Type E buffer along our eastern property boundary.

This was always allowed by the PUD dating back to 2009, it was a commitment that needs to be modified into a deviation based on the current format for PUDs in the County.

We added a four to six-foot tall wall around the property on the southern, eastern, and western property lines. This came out of the neighborhood information meeting where folks to the south of us wanted some additional buffering and the developer was happy to accommodate that. And then some, again, housekeeping-type changes to the commitments managing entity language, prompt share payment for any future improvements at Orange Blossom and Airport Road intersection, memorializing that four to six-foot wall commitment, and then specifying the types of trees that would go in these front yards where we have reduced setbacks because there was concern we wouldn't be able to accommodate large trees within those lots.

So the subject property is outlined in yellow on the slide. It's located immediately south of Orange Blossom Drive. It's about a half mile to the west of Airport Pulling Road. It's a really urbanized area of Collier County, surrounded on all sides by sustained development and infill redevelopment in nature.

This is a little bit of a closer view. The site is just under seven acres in size. It was formerly used as a landscape nursery, which you can see on that aerial it was purchased by London Bay in 2015. We are in the urban mixed use urban residential subdistrict.

The RPUD dates back to 2009, it was approved for 20 dwelling units total. It did allow for a mix of either single-family detached, single-family attached, or townhome products and there's a small onsite preserve area within the project.

This is the currently-approved PUD master plan. There's a single appointment of entry from Orange Blossom Road which creates a cul-de-sac. The units would line that roadway. There's potential interconnect to the property to the west. It's currently a single-family residence, but that was memorialized as potential interconnection in the future. The .15 acre preserve is at that far southwest corner and then there's some stormwater management in the corner of the site.

What we are proposing is -- in terms of the changes to the master plan, very minor in nature. I'm going to do side by side just so you can see really how slight that is. The roadway

has just a slight curvature in it. This will allow for the community to be gated and have some stacking there at the front and also just to add kind of visual interest to the road by having some curvature, still terminates in a cul-de-sac with the units configured around that roadway.

We are maintaining the .15 acre preserve on that southwest corner, maintaining all buffers. They would be ten-foot wide Type B buffers where single-family is proposed adjacent to single and multi-family and so there's no change to that. And then you can see just a slight reconfiguration of our stormwater management along the western side of the site where it's more clustered in the corner, it's more linear in the design than the proposed plan.

This is a detail for the ten-foot front yard setback for the side-loading unit. You can see this would be the garage structure and instead of having a driveway that goes directly to the road, which would require a greater setback for vehicles stacking, this would have a curved driveway that can accommodate vehicles parking in the drive because it is side loaded, and this is fairly typical to PUDs throughout the County where a unique product types are being proposed.

The deviation added for the right-of-way is a 45-foot wide section. Staff has noted in its staff report several other PUDs approved for this specific deviation. This is a fairly tight site, an infill site, and so the reduced right-of-way width will allow us accommodate the larger lot sizes we're seeking, allow us to maximize yard spaces within those lots, and, again, it's just 17 units, so there's very low traffic volume on this road, so it certainly addresses public safety from that standpoint. You have ten-foot wide travel lanes to accommodate roads and we are showing that six-foot wide sidewalk on one side of the right-of-way. This also accommodates all the required utility easements, et cetera.

The second deviation is to have a six-foot wide sidewalk on one side of the internal right-of-way in lieu of five-foot wide sidewalks on both sides of the right-of-way. The code explicitly says that if you have 15 or less dwelling units on the street that terminates in a cul-de-sac and your density is less than four units per acre, you can do sidewalks on one side of the road. We are 17 units, so we're just two above that threshold. Again, low traffic volume and this will just allow us to better maximize this infill site.

THE HEARING EXAMINER: Let me ask you a question on that one. Is the six-foot sidewalk on the west side, or wait, wait, wait --

MS. CRESPO: It is on the west side, correct.

You can kind of see it shaded there.

THE HEARING EXAMINER: All right. So you connect up with the Orange Blossom Drive sidewalk; is there a sidewalk there?

MS. CRESPO: Yes.

THE HEARING EXAMINER: Okay. So it would come all the way down in what would be the terminus for the sidewalk?

MS. CRESPO: The red dot.

THE HEARING EXAMINER: Okay.

MS. CRESPO: The third deviation is just to memorialize existing commitments, Commitment 4A in the 2009 ordinance and that allows for a ten-foot wide Type B buffer adjacent to Cay Lagoon which is to our west.

They have a 25-foot wide planted buffer on their property to date. When combined with our 10-foot wide buffer, that's a combined total of

35 feet of buffering which exceeds the intent of the code for buffering single-family to multi-family. It was approved and the plantings are consistent with Type B requirements and it would be clustered on that property line, so compatibility will still be met through the proposed design. And, again, we are reducing the density to further enhance compatibility and support that deviation being memorialized through this PDI.

THE HEARING EXAMINER: On this one, where is the -- out of the NIM you said there was a commitment for a wall, where would that be located?

MS. CRESPO: That would be along the western, southern and eastern property lines. We're just not going along the frontages. We're going to be doing some enhanced landscaping.

THE HEARING EXAMINER: Okay. Good thing there's a nursery there, so you don't have to move the trees.

MS. CRESPO: Right. Yes. I think most of them have been removed or lost during Irma; that was an older aerial, but --

All right. And then PUD commitments, Commitment 1, just putting in the County's standard language now for managing entities of PUDs.

Commitment 2B is updating the Orange Blossom/Airport Road prop share language, just providing for a timeframe of when they would need to convey those funds should they be warranted. And then noting that the intersection improvements are scheduled for after 2025 and just better indicate the intent there by the County. Commitment 4C is just to, again, memorialize our four to six-foot fence wall along the east, south, and west property lines.

And Commitment 4D is that we would have two small trees to meet the yard tree requirements within any lots that have the ten-foot front setback and the thought there is a larger tree may develop a more significant root system and wouldn't fit as well within that front yard area.

The PDI review criteria is outlined very thoroughly in the staff report as well as the application materials. We are in complete agreement with staff. The request is insubstantial, we don't trigger any of the criteria either by any specific change or one combined as a whole; still very much in compliance with the insubstantial change criteria.

I'd just summarize that we do have Staff recommendation of approval. We are effectively reducing density within this project, reducing impacts on surrounding properties. The deviations will allow for effective use of this infill site that's in an area well served by proper infrastructure. We are simply clarifying a lot of the PUD commitments that are out of date due to the '09 approval and the request is consistent with your Land Development Code and Growth Management Plan. And the team is here to answer any questions you may have.

THE HEARING EXAMINER: Sit tight. Let me go to the public hearing and maybe we'll have some more questions. So why don't we go ahead and open it up for public comment. Do we have anyone signed up to speak to this?

MR. YOUNGBLOOD: Mr. Dickman, I have one individual, John Stanton. Mr. Stanton, would you like to speak on this item, sir? You need to unmute your microphone, please.

MR. STANTON: I'm A-OK. My questions have been answered. Thank you.

MR. YOUNGBLOOD: Thank you. John was our only registered speaker on this item.

THE HEARING EXAMINER: All right, so why don't we close the public hearing. Mr. Finn, do you have any other -- did you hear anything you want to answer, or questions or anything like that; is that in line with what your analysis was.

MR. FINN: (Inaudible).

THE HEARING EXAMINER: Your mic's not on.

MR. FINN: Yes, everything is good. We have nothing to add.

THE HEARING EXAMINER: All right. You almost got in trouble there. All right. Okay, so it appears that this property was some -- the big picture really is just that it never happened, stayed as a nursery and subsequent purchaser now has it. There's a -- you know, obviously residential products change over time. I get the side-loading garage, all of that triggers new requirements, new necessities for side yards and rear yards -- am I getting all this right -- and then a six-foot sidewalk instead of putting sidewalks on both sides, small sidewalks. Six-foot sidewalks are nice, you know, because runners can crash into bikers or moms and dads can push their kids on their strollers or when they get out to Orange Blossom.

If any of you have children, that's where you go to get your driver's license and I remember having to go down Orange Blossom with some kids trying to learn how to drive.

So it seems like a great project, infill project. I think a lot of people are looking for that. I know that the County plan is always looking for infill projects as opposed to constantly building in the rural areas.

I just have one question, maybe this is for Staff, on item -- this is page -- on the Staff report any way, 7 of 11, I don't know what it is on the packet. It says the Staff anticipates the proposed changes will not impact or increase storm water retention; that word anticipates seems to kind of be equivocal, but then you also on the next page before that, six, stormwater review, stormwater management staff has evaluated proposed changes to the PUD documents and found no issues with consistency. So am I to understand that that item, G, that really staff -- I'm not quite sure why you would anticipate?

MR. BELLOWS: For the record, Ray Bellows. The word anticipate is probably casts some gray area into the consistency finding that it will not create a problem.

THE HEARING EXAMINER: So when you said you're reviewing this and you're essentially sending it to various departments, landscaping review, environmental review, transportation, conservation-coastal, things like that, they're basically reviewing it and they're saying it's consistent. They don't see in their evaluation, their professional evaluation any problems, so Staff would rely on that?

MR. BELLOWS: Yes. And at the time of zoning, we feel that this project is consistent with all our requirements that will come in through either platting or SBP and those will be finalized and be consistent with all County rules and regulations and will not create a flooding hazard.

THE HEARING EXAMINER: Okay. Great. Let me just check my notes here. Appreciate you responding to some of the questions I've had and accommodating some of those, so thank you very much. That's exactly what the neighborhood information meetings are for, is for a dialogue between the neighbors and the petitioner and some of those things go away before I even have to hear them, so that's great. I have no further questions. Do you have anything else you want to present today?

MS. CRESPO: We're respectfully requesting approval.

THE COURT: Okay. Great. Good rule of thumb, if there's nothing else to say, don't say anything; know when to quit.

All right, so we're going to close that item. I don't have anything else on that. I will get -- as I stated, I am work on the decision and get that out as quickly as possible.

The next one here, let's get organized.

So now we're going to 3B. This is another PDI, correct?

MR. FINN: Yes. For the record, I'm Tim Finn, principal planner. This one is for a petition number PDI-PL20210000895. Hammock Park Apartments, LLC requests an insubstantial change to the Hammock Park MPUD, Ordinance Number 07-30 as amended for, number one, a deviation from LDC Section 5.03.02.C, to increase the maximum fence and wall height of six feet to eight feet around the multi-family residential portion on the C/MU(1) tract shown on the Hammock Park PUD master plan subject to approval from FPL and Collier County Public Utilities Department where applicable, and to revise the Hammock Park community master plan showing the maximum fence and wall height of eight feet around the multi-family residential portion on the C/MU(1) tract.

Number two, the modification of General Development Commitment 5.10.A to clarify that the affordable housing units are for essential service providers earning 100 percent or less than the County's median income.

And, number three, the modification of General Development Commitment 5.10.B to clarify that the 5,000 square feet of eating and drinking places, sit down/quality restaurant, includes outdoor seating area.



Furthermore, the project is compliant with the (inaudible) and LDC, therefore Staff recommends approval.

The Applicant has complied with all hearing notices by our operations staff. The advertisements and letters went out on September 3rd. The hearing advertisements, property signage were constructed at the property by the Applicant per the affidavit of posting notice attached in Attachment F of the backup materials.

THE HEARING EXAMINER: All right. Thank you very much. Alex, come on up.

MS. CRESPO: For the record, Alexis Crespo. I'm with Waldrop Engineering representing the Applicant. The Waldrop Engineering team is available for questions on this as well and the Applicant/owner is on scene I believe if you have any questions of him.

I think this is the third time you're seeing this project maybe even this year before you for an insubstantial change.

The property is known as Hammock Park. It's a mixed-use planned unit development; about 19 acres in size, just at the northeast corner of Rattlesnake Hammock and Collier Boulevard adjacent to the Hacienda Lakes PUD MDI, but not within that project and it's been zoned for commercial uses since 2000 and most recently modified that to a mixed used planned development for 202039 adding multi-family uses to the project.

So we are here before you adding one deviation to allow for an increased fence wall height around the multi-family portion of the property. We are pursuing that mixed-use development option. We have commercial on the frontage and the taller wall ensure compatibility between those commercial uses along the roadway and the multi-family portion to the east of that.

We are also clarifying two PUD commitments. Some of the commitments were made at the podium during final BCC hearings and we just found some implementation issues as we worked through the SDP process, so we're here to clarify those. And that relates to the wording of affordable housing commitment as well as wording of a commitment to provide for 5,000 square foot of quality sit-down restaurant.

This is the approved PUD master plan. The location of the fenced wall height is around the multi-family portion of the project which is going to be on the east side of the development, so we're just looking to encircle that with a taller wall two foot above commercial use development on the frontage as well as to provide screening from Rattlesnake Hammock Road. The 5,000 square foot restaurant space would be located along the Collier Boulevard frontage.

The way it was worded, outdoor seating areas did not contribute to that 5,000 square foot because it is tied to a certificate of occupancy which really only applies to internal space of the restaurant, so we needed the flexibility to include outdoor seating in order to meet that 5,000 square foot threshold. So we want to have a restaurant, we just want to make sure that outdoor seating contributes to that space and 5,000 square feet is fairly large for a restaurant, so having that outdoor space is very important for the developer.

And then lastly, a portion of our multi-family units will be affordable housing units for essential service providers, which is those earning 100 percent or less of the County's median income. We just need to tighten up the language on that commitment and I'll walk you through those changes.

So the crux of the -- with respect to my client here is that we're talking out the word persons and inserting renters and this is at the request of the County because these are required to be rental units per our approval, so clarifying that tenants will be renters within this project. Clarifying that 27 of the 48 units will be income restricted to those earning no more than 100 percent. Without that, they would have to exactly 100 percent potentially, so just clarifying that.

And then there was reference in that last portion condition that they not exceed the

most current Collier County table of rental rates established for 100 percent median income and it says low income category which does not align with the essential service provider affordable housing level and so we needed to strike low income to ensure that it is that 100 percent or less. And Staff did review the meeting minutes and is very comfortable that this was the intent of the board of county commissioners was for this to be designed for essential service providers at that 100 percent rate and not the lower levels of income, so that is the clarification on that commitment.

The second is relating to that 5,000 square foot restaurant. The district commissioner at the time felt very strongly at the time that the project needed a quality sit-down restaurant to provide for the area, so we were pleased to make in a commitment. We just needed to include outdoor seating in that calculation in order to meet that threshold.

THE HEARING EXAMINER: On that issue, didn't you have a wall, weren't you thinking of a wall or something in between the commercial and the residential areas?

MS. CRESPO: Yes.

THE HEARING EXAMINER: So the commercial sit-down outdoor dining, whatever you want to call it, how is that going to be accessible for the residential area or is it not?

MS. CRESPO: I actually might defer to my engineering team to see if there's any pedestrian interconnectivity.

THE HEARING EXAMINER: Or is that just intended for the restaurant -- I mean, obviously it's open to the public, but from a pedestrian point of view, was just curious, otherwise you have to go out to the street and walk around.

MS. CRESPO: Right. We're going to look at our plans that we've submitted.

MS. LAROQUE. For the record, Jackie Laroque, Waldrop Engineering. I'm director of engineering for this one and there is a connection between the residential and the commercial.

THE HEARING EXAMINER: All right. Thank you. MS. CRESPO: The Staff has recommended approval of these changes, and I've pointed to those three that I've outlined. We are in agreement with Staff analysis that the request is consistent with the insubstantial change criteria within the Land Development Code and in agreement with staffs analysis that the changes don't impact the original intent of the PUD.

These will just provide for clarification as we work through our site development plan permitting with the County and will enhance compatibility between internal uses within the project and it is consistent with your Growth Management Plan and Land Development Code. I'm happy to answer any other questions.

THE HEARING EXAMINER: All right. Thank you very much. Mr. Finn, any of that deviate from what your staff report has?

MR. FINN: Everything's square.

THE HEARING EXAMINER: Everything's square with that, okay. Great. Let's open it up for public comment. Do we have anyone registered here to speak?

MR. YOUNGBLOOD: Mr. Dickman, we do have a few public speakers. Just one moment here.

THE HEARING EXAMINER: All right. Are they all remote?

MR. YOUNGBLOOD: Yes, sir, they are all remote.

THE HEARING EXAMINER: Okay. You're in control.

MR. YOUNGBLOOD: It looks like our first public speaker is Alex Licata. Alex, would you unmute your microphone please and the floor is yours.

UNIDENTIFIED SPEAKER: He's part of the Applicant team.

MR. YOUNGBLOOD: Okay.

THE HEARING EXAMINER: Okay, so he's part of the Applicant team, so let's --

MR. YOUNGBLOOD: Okay. I had one other public speaker and it does not look

like that individual is on the line anymore, so that is all the registered speakers for this item.

THE HEARING EXAMINER: Okay. Okay, closing the public hearing. All right, anything you want to rebut? All right. So we're going to close the hearing on this one. It seems pretty straight forward to me. Thank you for answering the questions.

For some reason I am becoming very familiar with this site and I understand what's being asked. I don't -- I think Staff did a really good job going through all the justifications, deviations. Ms. Crespo, you did a good job presenting that for your client, so I thank you very much. I will go ahead and -- unless Ray, you-all, Mr. Finn have anything else you want to say before I close this. Do I hear anybody that's not a public speaker. I have great ears here, terrible ears at home according to my wife. All right, so we're going to close that. I'll get a decision out as quickly as possible. Thank you for being here.

And we're going to move on to 3C, which looks like a variance; is that right?

MR. KELLY: Morning, Mr. Dickman. John Kelly, senior planner for the record.

THE HEARING EXAMINER: Mr. Kelly.

MR. KELLY: This is your item 3C. It's variance petition PL-20200001329 . The subject property is located at 992 Spanish Moss Trail, Lot 19 of Pelican Marsh Unit 4, Phase 2 in Collier County, Florida.

The requested action is for you to consider a ten-foot variance from the required rear yard accessory structure setback of ten feet as provided for in Ordinance 02-71 as amended, the Pelican Marsh Planned Unit Development. Section 3.5.D, as in David, the request is to allow the existing pool deck and screen enclosure to be extended to zero feet from the property line which abuts a lake maintenance easement.

Notice and hearing requirements for a variance are contained within LDC Section 10.03.06.F.2. The required agent letter was sent by the agent on or about June 24th, 2021 as evidenced by an affidavit contained within the attachments.

The public hearing and sign was posted by me on September 7, 2021 and the property owner notification notice and newspaper ads were run by the County on or about September 3, 2021.

As part of this petition package, the Applicant has provided an approval letter from the foundation of Pelican Marsh, its own review committee, and two letters of no objection from the adjoining property owners are contained within the attachments.

The crux of this application is that the Applicant is -- if I could get one of the exhibits please, No. 4 -- it's to reduce the setback as there is a special rear yard allowance within the residential component of the planned unit development. They're using that allowance as justification to request this variance and it's Staff's opinion that the purpose of the special allowance is to allow all residents on the lake to enjoy the reduced setback requirement, not simply one person to request a variance, but using that as a justification.

Having said that, the Staff is constrained from recommending approval of this variance as no related -- no land-related hardship has been identified. Should you find merit to the Petitioner's arguments, approval should be -- should incorporate the conceptual site plan contained within Attachment A and that concludes Staff's presentation.

THE HEARING EXAMINER: Okay. If you could just leave this chart up, I've seen this type of thing before with PUDs that have HOAs and, you know, they contemplate this sort of thing to happen on retention ponds or other areas. And that does come into play with the evaluation, right, in terms of the fact that it's on a pond or a retention pond, I've seen the documents, and also it's a golf course, which is why you go to the HOA and ask for their authorization as well as the adjoining neighboring property owner; is that correct?

MR. KELLY: Correct. I do need to add for the record that there is no architectural treatment on the subject lake which is what would trigger the special allowance.

THE HEARING EXAMINER: All right. Thank you very much for that. I appreciate it. Is the Applicant here? Hi, how are you? Come on up. It's nice to see you.

MS. GREENE: Good morning. Gina Greene, engineer representing for the owner. I would like to address the architectural lake treatment item first.

THE HEARING EXAMINER: Yes.

MS. GREENE: In this particular case, and in most cases when a developer develops a property such as Pelican Marsh, they do not build architectural bank treatment into lakes, especially residential units because it costs money to add in bulkhead or riprap or anything like that. They usually preserve those areas where there's clubhouse sites, things like that. In this case, lake maintenance is totally within the lake tract, so it's not projecting an easement on the back of any of the properties. And in this case also, the grades between the rear property line down to the controlled elevation on the cross sections for this property are relatively flat. They would have not needed any architectural bank treatments.

In this case on this variance, the projection of this pool deck to this rear does not change the slope of the lake maintenance easement. They would build a footer -- I think they only have to bring in about a foot of fill on the back to just level out the back of the deck and they could put a footer very easily that would not alter or add any fill into the lake maintenance easements. It Does not change the accessibility or the use of that lake maintenance easement.

They are minimizing their -- not as far as the ten foot, but they have minimized the property owner to the east of them, asked if they could shorten it to where his visual triangle is not impaired by this extension, so he had no objection. So we did minimize the width of the total -- or the overall length of the extension to let them go clear to the edge of their existing screen enclosure. So now we have punchout more in the middle of it and therefore it does not impact either side to the owners and they submitted letters of no objection stating that they did not have a problem with this, along with approvals from Pelican Marsh.

I did get one other letter from an -- one of the property owners that was notified that he did not have an objection. He looked it as a value added to their community that if other people chose to do this, too, that it would add value to their property along with this property. Any quick questions?

THE HEARING EXAMINER: No other questions. I understand exactly what's happening. And thank you for -- I do have -- I'm looking at page 244 in the packet, I've seen -- I have the Pelican Marsh letter, I've also seen the no objection letters from the adjoining property owners, so thank you for doing that.

Is anyone here for the public to speak to this?

MR. YOUNGBLOOD: Mr. Dickman, I don't have any registered speakers for this item.

THE HEARING EXAMINER: Okay. John, anything else before --

MR. KELLY: No, sir.

THE HEARING EXAMINER: Okay. Just wanted to make a quick statement, I mean, with regard to variances, every variance is taken on a case-by-case basis. A lot of people worry about precedent, things of that nature, under the law. All variances are reviewed as they come on a case-by-case basis, so I have all the information that I need I believe. You've addressed the issues as the Applicant's experts. John, as the County's expert, you've addressed all the issues that I would be looking for under the criteria, so I have no questions and unless somebody else has something else to say, we have no public

speakers -- you know, the only thing I've seen so far are letters of support or no objection I should say and no objection from the HOA there,

so -- all right, other than that, I'll go ahead and close this item and I'll get a decision out as soon as possible.

MS. GREENE: Thank you.

THE HEARING EXAMINER: Thank you very much for being here.

MR. KELLY: Okay, Sir, the next item on your agenda is 3D which is a boat dock extension, PL20200001723. The subject property is located at 678 Palm Court further

described as Lot 27 Block F, Goodland Isle Second Edition in Collier County, Florida.

The Applicant is requesting a 53-foot boat dock extension from the maximum permitted protrusion of 20 feet for waterways greater than 100 feet in width to allow the construction of a boat docking facility protruding a total of 73 feet into a waterway that is plus or minus 430 feet wide for the benefit of the described property.

The notice and hearing requirements for boat dock extension are contained in LDC 10.03.06.H. The property owner notification letter and advertisement were run by the County on September 3rd, 2021 and the public hearing sign was posted by me on September 7th, 2021.

The boat dock extension review criteria are contained in LDC section 5.03.06.H. With respect to the primary criteria, the application has satisfied five of five of the requirements and with respect to the secondary criteria five of six where one being not applicable as that is the manatee protection plan which does not apply.

The Staff has received four letters of no objection that are contained within Attachment F. I did provide a graphic with that attachment so that you could see where those were in relation to the subject property. If you'd like to see that on the screen, we can pull it up, but otherwise it is contained within your package.

I did receive an additional letter which was received after publication. I'm going to introduce that into the record at this time. Again, there's no objection. And so having said that, the County recommends that you approve petition BDE-PL2020001723 to allow further construction of the proposed docking facility as depicted within the plans contained in

Attachment A with the following conditions: One, that a special treatment permit must be obtained prior to obtaining a building permit for the proposed docking facility. And, two, that reflectors shall be installed at the outermost end of both sides of all dock elements and mooring pilings, which ever protrudes the furthest into the water way prior to issuance of a certificate of completion. And that concludes Staff's presentation.

THE HEARING EXAMINER: Thank you, John. Is the Applicant here, or a representative of the Applicant? Come on up, yeah. How are you, sir?

MR. PEARSON: Good. How are you?

THE HEARING EXAMINER: Fine. Thank you.

MR. PEARSON: For the record, my name's Nick Pearson. I'm a project manager with Stern Hall and Associates. Do I have a clicker for this or no?

THE HEARING EXAMINER: No, we'll look at your picture.

MR. YOUNGBLOOD: Nick, I'm your man.

MR. PEARSON: You can skip that one for sure.

MR. YOUNGBLOOD: No, it was great.

MR. PEARSON: That's my shortened version of my resume. I've worked on many projects around Collier County.

THE HEARING EXAMINER: You're an expert.

MR. PEARSON: Okay, so this is where the project site is in relation to the rest of Goodland. As you can see, there's a little pin at the very south, very south side, which is 678 Palm Court. It's kind of in the middle of a semi-circular peninsula where there's two manmade canals on either side of it and actually, like, sort of a natural river that runs through the south side of the property. I guess this doesn't --

THE HEARING EXAMINER: It's a little laser beam there. All right, there you go.

MR. PEARSON: So this is a survey of the property obviously. I think the important thing to note about this slide is where the seawall's location is. As you can see, it kind of comes in a pretty significant amount from the actual property line and then this dashed line here is actually the mean low water line.

THE HEARING EXAMINER: Okay. So this is what I wanted to ask you, because I was looking at this with the aerial photograph, so there is a seawall there, right?

MR. PEARSON: Yes.

THE HEARING EXAMINER: I noticed there's a variety of different things in this area, some of them are riprap and whatnot, but how did that -- how did that occur like that? It just seems

like -- in other words, it seems like it's set back to the point where -- and you're going to help me with this accretion or aliction (ph), something where sand builds up slowly over time?

MR. PEARSON: Not exactly in this case. That can occur, this particular situation kind of came up before the deep-end dollars owned the property, there was a compliance case with the previous owner where he illegally cleared mangroves, so the is situation was resolved. You know, everything was rectified legally and then the seawall was installed and unfortunately at the time there really wasn't a lot of information available to the State or really any party involved as to where the mean high was, so the determination was made essentially that this is where the mean high was at the time.

THE HEARING EXAMINER: All right. I got it. Now I understand. Thank you.

MR. PEARSON: Yeah. Next slide. So as you can see here, these are all water depths at mean low. So as you can see, there's really not a lot of navigable water until you get out a fair amount. And when you do have, you know, your king tides, the mean -- the low tide can come down even further, so there's just not a lot of water here for navigation of a boat.

So this is the dock that we're proposing to build. As you can see, the mean low is shown here again. The mean high is up against the seawall base. State rules in this area do not allow us to protrude past the minus four foot contour at mean low, so that is what this dashed line is right here.

As you can see, it's a pretty narrow walkway, only four feet wide, so we should satisfy the criteria for not having excessive decking, there's only two vessels, which falls in line with county code and I believe that's it.

Again, a cross section of the previous slide. It basically shows just the general dimensions of everything we're planning to build.

So in this slide we're kind of depicting how much room is left for navigability. As you can see on the right side here, it's just a hair under 100 feet between the outermost lift pile and the nearest structure and on the other side it's about 140 feet. The waterway here, there is a land mass right about here, it's about 400-some feet between the subject property and that land mass.

Next slide. There we are. This project is within the ST overlay. We will have an ST permit for the proposed structures as well. And this is basically depiction of what the waterway looks at, at an extreme low. As you can see, it's about

27 feet off of the face of the seawall, so to reach navigable depths here, you really do have to go quite a bit further out.

THE HEARING EXAMINER: Let me just ask you a real quick question, so the location of the -- where you're going to have the -- essentially a boardwalk, I don't know if it's five feet, six feet wide --

MR. KELLY: Four feet wide.

THE HEARING EXAMINER: Four feet wide. So you're choosing to put that connection with the seawall on I guess the closest to where the property line is; is that correct? I'm seeing the aerial with the red dashed line and I'm presuming that's what the property appraiser is claiming that's the property line, but it seems like that's the closest to the line.

MR. PEARSON: Yes. I think we did place it in a spot where the wall kind of comes out a little bit.

THE HEARING EXAMINER: Okay. So I guess my question would be, it seemed -- I'm guessing, but it seems like that would -- a 20-foot dock, which is permissible, right, single-family homes, would not even fit in that area, so you would be constrained in that regard.

MR. PEARSON: I believe that's probably true. I'd have to get an exact

measurement, but I think to put a boat on the outside of the dock, yes, we'd almost certainly be exceeding 20 feet there.

THE HEARING EXAMINER: And as far as the vessels, this property owner has either purchased or is ready to purchase these vessels? The reason I'm asking is that these types of requests are driven by the need for a vessel and, you know, not just speculating.

UNIDENTIFIED SPEAKER: They own one.

MR. PEARSON: They do own one, yes.

THE HEARING EXAMINER: Is that the property owner?

MR. PEARSON: Yes.

THE HEARING EXAMINER: Why don't you come on up, sir? Let's just get that into the record. You're not the property owner?

UNIDENTIFIED SPEAKER: I'm the lawyer. THE HEARING EXAMINER: Rich, you understand what I'm saying because these -- this is part of the code and it's really kind of driven by, hey, I have a boat or I'm buying a boat and I need this dock because of constraints on my property first.

MR. YOVANOVICH: For the record, Rich Yovanovich. Yes, the code is geared towards addressing the property owner, either already own boats or anticipated to own boats. They already own these boats and obviously we're going out the minimum depth we need to, to give them enough water.

THE HEARING EXAMINER: That's enough for me. You're a licensed attorney and I know you would never put something otherwise on the record, so thank you.

MR. PEARSON: So on this slide there's a few different things here, starting with this picture right here, so this blue hatch you can kind of see here is actually the boundary of the aquatic preserve. That basically means that dredging is not a possibility in this location at all because of state law. There was some question as to where the boundary is, aquatic preserve actually went to. The answer to that question ended up basically looking like this. It's basically this yellow line is where we ended up.

THE HEARING EXAMINER: That's the overlay? MR. PEARSON: No.

THE HEARING EXAMINER: Oh, the aquatic preserve, okay. All right.

MR. PEARSON: Yes. Yes. So initially the State had said that State-owned waters came up to the platted property line. It ended up -- we ended up finding out basically that the State was not going to fight us on anything within the platted property line. They wouldn't give us an exact ruling on where the aquatic preserve boundary was, so this was essentially an overlay from their online permitting system that depicts the markings for the boundary, so that is where we essentially came to understand where it goes to. THE HEARING

EXAMINER: So prior to this presentation, the property owners obtained I think they said five no objection letters. I think John said four. We got a new one from 727 Palm Point Drive. I don't know if that's one of them. I think you're highlighting blue lines where we received no objection letters, which most significantly include the ones that are abutting your client's property. John, you have something you want to add?

MR. KELLY: Just that we did just receive the letter that was distributed to you this morning from 727 Palm Point Drive and so that would be a total of five letters that have been received by the County.

THE HEARING EXAMINER: Okay. I do see also there's another one that is on this graphic to the right which would be in a more narrow navigable area and they appear to not have any issue with this either as far as navigability and things like that, so thank you for providing those no objection letters.

MR. PEARSON: Obviously I'm not sure whether we can talk about the verbal no objections, but one of the verbals was from this owner, the other I believe was this property right here.

THE HEARING EXAMINER: Well, unfortunately, I'm not going to -- if they don't give me a letter that I can look at, I'm not saying that they didn't give you a verbal thumbs up, but that's fine, I get it, but it's less impactful to me than having a written no objection, or maybe one of them are on the line, we'll see. You want to go call?

MR. PEARSON: I'm good.

THE HEARING EXAMINER: No? Okay. Keep going.

MR. PEARSON: Okay. So these are just some of the things that we've had come up on other boat dock extension petitions that we've handled. The views in this case, I don't think we really affect anyone's views. There's only a couple that would look at the property and the dock and as it stands, their view already consists of a property on the opposite waterway with additional docks. Since we are on a point, I don't really think any of the neighbors are affected by this either.

In terms of value, again, I don't really think this would negatively affect anyone. If anything, a nice, new structure here would help increase value in my opinion.

Navigation, I don't believe we're blocking anyone's ingress/egress. The canals to either side of the proposed dock are already more narrow than any of the restrictions we might be creating here. And I don't really think there's any precedent for this kind of thing on any of the other properties. The shallow waters in the aquatic preserve here create a specially unique situation where I think we really don't have any other choice but to make the dock the length that it is.

THE HEARING EXAMINER: Okay. A couple of other things that are part of the criteria, one is I've already noticed you're not overdecking, which is good. You're not -- there doesn't appear to be any unnecessary decking here. These seem to be strictly for the access of the two vessels. Secondly, and this is I want you to put on the record, is it your opinion that the way that you have designed and configured this dock facility, that it's a -- it allows for the individuals using the vessels to safely get on and off of the vessel?

MR. PEARSON: Yes. Yes.

THE HEARING EXAMINER: Okay. Good answer. That's a criteria. We can't have people getting hurt; that's part of the criteria. Okay, anything else?

MR. PEARSON: No. I would add that we are also an engineering firm, so some of our designs actually do require us to hold some liability, so as far as this decision goes, that's very important to us.

THE HEARING EXAMINER: I don't think I've had a chance to meet you. Usually it's Jeff that's here.

MR. PEARSON: I did one other with you on Capri, but --

THE HEARING EXAMINER: You didn't put your photograph up.

MR. PEARSON: I think it was, but it listed somebody else, so you might have been distracted by --

THE HEARING EXAMINER: I was. Yeah, you need your own page. Sit tight. John?

MR. KELLY: If I could please get

Attachment F, I just want to set the record straight as far as the County is concerned as far as the letters of no objection that were obtained by us. They are noted by the stars on the property and you'll see on the right side 727, that does not have a star; that is where the letter of no objection from this morning would go, so pretty much most of the people that would be affected by this dock have provided letters and that's all I wanted to add. Those are the record -- those are the letters that we can confirm have come in.

THE HEARING EXAMINER: Okay. Well, let's open it up to the public and see if there's anybody else, proponents or opponents who just want to say something? Anyone here sign up to speak?

MR. YOUNGBLOOD: Yes, sir, I have one public speaker registered. James Seegers.



One second. Mr. Seegers, are you with us, sir? You have to unmute your microphone, please. There you go.

MR. SEEGER: Okay. Thank you very much. My name is Jim Seegers. I'm at 699 West Palm Avenue and I'd like to speak out against this in rather civil tone, but I think there are some real problems here.

This proposed pier is two to three times as long as anything that's presently existing at any private residence and certainly it's longer than what the County boat park that has been put in, it's longer than the yacht club, the folks there, their pier length at the Calusa Island Yacht Club and there are 12 boats on that pier.

As far as I noticed, they are willing to put lights and reflectors. We, as a matter of decency, we have a legal pier, but we put a light out simply because we thought it was in good standing and ours only goes out a few feet. This is three times as long and we all know that lights and reflectors just don't hold up under the salt conditions. Mine alone is a considerable effort to change a bulb, dusk-on lights, the electrical connections, so this will last very shortly and boaters don't really expect one private pier to extend two to three times as long as any other pier in the area.

And particularly on weekends and holidays, there are hundreds of boats that use this waterway and as the number of boats go up, the traffic pattern widens significantly. In fact, we have people come within 10 to 15 feet of our pier, which is slightly to the west, and there's no problem, that's what they need to do. We say hello and greet them, and if they run out of gas, we help them out.

The next thing I'd say is the precedent. This is a precedent as I see it is very dangerous. This is a private residence and simply to get deeper water wants to move out.

Key Marco, the home of multi-million dollar homes, does not have private piers, it has a central pier and a central marina that people share.

I'd like to say a word about the present situation. The present situation that they're describing is shared by most if not all of us in this area and it's not a hardship, it's only basically a convenience. This is not a new situation. We actually have piers and tides that go and out for some time now.

I first found out about this in April of this year and I was somewhat disturbed by Mr. Person's comment on the secondary criteria where he states rather casually I thought there are only a handful of residences whose views would directly face the proposed project. It seems rather clear that the author of that statement is not among that handful. But I think one should consider a little bit further there's only one house, one house, one residence that would benefit from this very long pier while there's a whole handful of people who view it and it does detract, there's no doubt about it. But that handful of people is just really a small part of things. I think one has to consider the paddle boarders, kayakers, and the boaters who use that water on a regular basis and this would require them not to be able to use it anymore.

And, yes, the boaters can go around that very, very long pier, yes, the kayakers can go around it and, yes, the paddleboarders too, but it changes, it sticks out two to three times as long as anything else and if everyone did that it would really, really be a problem. And I also I think there's going to be a lot of complaining that the people who approved something like that are going to have to listen to because it's going to be forthcoming.

And the secondary criteria only deals with the immediate people. It doesn't seem to consider the public who are very much invited to use these public waters, so we all share this situation.

I'm also concerned about the future use of that pier. These people will be moving on as people do and the pier will continue to be very long and we've already had examples of people starting to rent things out. You say, well, it's so shallow, they can't rent it; that's just not true. In our situation, our boat lift is exposed to sand at low tide, it's exposed to sand, and at high tide of course it is not. And enforcement of someone who decides to rent is very spotty and very

difficult. And when one considers the reason for the request, the reason simply is shallow water at low tide at a private house; that's it; that's it and that isn't very much.

But I think in any situation like this one would like to present available and practical remedies that are available to these people, to all of us who are in the exact same situation; that would include you can rent a slip at Safe Harbor Marina, you can rent a slip at Walker's Marina, or from the County boat area. It's very easy to do. You can rent a slip at Calusa Island Yacht Club, you can buy a slip at Calusa Island Yacht Club and all these places are easy. They're within walking distance and certainly within golf cart usage.

Or, or one more very strong option is to install a legal pier like everyone else has done and live with the minor inconvenience. And the inconvenience is that you go boating when the tide is in, and when the tide is out maybe you read a newspaper or have a margarita. This is not a hardship, it is an inconvenience that we all share, and the public will be very much affected, Safety will be affected and the precedent is very dangerous. And that's all I have to say. Thank you very much for your time and for listening.

THE HEARING EXAMINER: Can you hear me? Can you hear me?

MR. SEEGER: Yes, I can.

THE HEARING EXAMINER: Okay. Great. I'm looking -- while you're speaking, I'm looking at the aerial photographs and I think I've identified your property and I just want to be clear about that. It looks like it's on the cul-de-sac across the waterway and you have a dock on -- you know, with one boat. Am I correct you're on the next cul-de-sac over?

MR. SEEGER: No, we are on the point, just before you enter where Calusa Village Condominiums, we're on that point. It would be on the left side -- I was going to point, that's not going to help you much -- the one that protrudes out the house and then where you see our pier there.

THE HEARING EXAMINER: Right.

MR. SEEGER: It's to the very left as you face your screen.

THE HEARING EXAMINER: Okay, I think this is it. I don't know if you can see, but I believe this would be it up here somewhere.

MR. SEEGER: It's just before where people would turn into that final manmade waterway along Calusa Village Condominiums there. We are on that point -- well, we're on the point.

THE HEARING EXAMINER: And it looks like -- I mean, I think I see your property. You have a large decking area, I don't know, based on what has been submitted here, it looks like your dock goes out 27 feet, those aren't exact measurements, but your neighboring property looks like it's sort of curved in and it looks like there's a structure on it; am I describing that right?

MR. SEEGER: Yes. You're actually right where you should be. Yes, that's correct.

THE HEARING EXAMINER: And it looks like there's another boat on your property at a different location on your seawall?

MR. SEEGER: That could be, yes, that's correct.

THE HEARING EXAMINER: All right. Thank you. I just wanted to know -- and your comments are well taken and I just wanted -- I like to get a geographic reference of where comments are made, so thank you for being very clear and succinct and I'm going to give the Applicant time to address, so thanks for participating.

MR. YOVANOVICH: Can I ask him a question?

THE HEARING EXAMINER: Yeah, one second, the attorney for the Applicant is here and would like to ask you one question.

MR. YOVANOVICH: Mr. Seeger, you mentioned renting boat slips, do you rent your boat slip?

MR. SEEGER: No.

MR. YOVANOVICH: Why would you -- why do you think that my clients would not

also follow the law?

MR. SEEGERS: I think if you'll review the record, I didn't say your client I said future use if they choose to sell it that they may not share the same sensitivities or cooperation of community that the present owners are showing; that's what I believe I said and correct me if I did not say that.

MR. YOVANOVICH: So you're afraid of the unknown, that someone might decide to not follow the law like you and my clients are willing to follow?

MR. SEEGERS: Yes, that's correct.

THE HEARING EXAMINER: Thank you, Mr. Yovanovich. I appreciate it. Did you get your answers or what you wanted on the record?

MR. YOVANOVICH: Yeah, I just wanted it on the record, he has no reason to believe that my client is not going to follow the law.

THE HEARING EXAMINER: Yeah, I don't think he said that. Yeah, I think I understood what he said. He was saying one of the solutions would be simply following the law, but that's not what we're here for. Okay.

MR. YOVANOVICH: We're all here to follow the law.

THE HEARING EXAMINER: Well, I know, but to get a variance beyond the point-- I understand. Thank you for the public comments. They are very well taken. I'm going to give -- that's done now. I wrote some of that down. And, Rich, either you or your expert probably is the one that needs to answer that, but one of them that I wrote down was it's too long; pretty sure that a lot of that was answered in the presentation.

The other one I want answered has to do with precedent. Again, these things are taken or presented to me, the ones that are presented to me are on a case-by-case basis. Every situation is different, different configurations, different lots, different locations, different water depths. I don't really have -- I don't go back and look at other things. I have to take it on a case-by-case basis, so I don't really think that needs to be addressed as a matter of law.

But as far as like the dock being too long, I guess what I would like to hear is, is this the minimum length -- so you're asking over -- let me put it this way, by right you have 20 feet. If you go beyond 20 feet, I would think that you're asking for the minimum that you need in order to achieve the enjoyment of the vessels that you're going to be using, so if that could be just stated --

MR. YOVANOVICH: Two things, and then you can correct me if I'm wrong. If you go back up to this picture, you'll notice the way we measure boat docks, as you know, but personally speaking is you measure from the most restrictive point, the property line or the seawall. If you look there and you use the seawall, we basically can't have a dock, so that's one.

Second, we are going out the minimum length necessary to achieve water depth for the boat, so that's one of the criteria, and we're meeting that criteria. Nick said that in his record, in his testimony, he can come back up here and say it again, but --

THE HEARING EXAMINER: Yeah, let me ask -- let me get, just that -- I think the record -- it's important to have the record cleared. Again, you're going to have boat lifts on these, both of them will have boat lifts, correct?

MR. PEARSON: Correct.

THE HEARING EXAMINER: And, what, 10,000-pound boat lifts approximately? Do you know how much?

MR. PEARSON: How much draft they need to operate?

THE HEARING EXAMINER: Well, what I'm getting at is when you put a boat on a boat lift, you have to drop the boat lift down into the water deep enough in order to bring a vessel onto the -- you're their expert, but I'm going to say bring the vessel onto the lift and then bring the vessel out of the water, so I guess what I'm getting at, if you could tell me that this is the proper depth and you haven't gone out any further, or have you, in order to do that. So, in

other words, it's not just the draft of the vessel, it's actually how deep does the actual lift have to go down in order for the vessel to get on to it.

MR. PEARSON: So there's really two answers to that. And if you'll recall, I've depicted the minus four foot contour at mean low water. A requirement of putting a dock within the aquatic preserve is that you have one foot of operable space to meet the lowest point of the dock in a seaport, so we're really pinched here to -- as to where we can put this dock. You can't go further than the last four foot contour, but you must have a certain amount of space to be able to launch your boat. And you're right, also in order to drop your lift in long enough, you're going to need to have some space as well, so if you count on say two feet of draft by the boat, which I think that seems reasonable for the size of boat we're showing, you need at least another, you know, minimum of, you know, another foot to get the lift in and at that point, you know, you've only got about probably a foot or less of space between the lift and the boat to actually lift the boat.

THE HEARING EXAMINER: Okay. And that's what I wanted to know.

MR. YOVANOVICH: Mr. Dickman, I don't know if the actual weight capacity lift matters to you, but it's 15,000. You had said 10, I just wanted to make sure --

THE HEARING EXAMINER: Well, I mean, the -- the means get bigger in order to hold bigger BOATS, so that means you've got a longer BEAM I would expect, that means you've got to go deeper there too.

MR. YOVANOVICH: I just wanted to mention --

THE HEARING EXAMINER: I have that, so it's 15,000, so I think I have everything. No more speakers, Andrew?

MR. YOUNGBLOOD: No, sir. I only had one registered speaker for that item.

THE HEARING EXAMINER: Okay, so we're going to close the public hearing. We've already had rebuttal. John, you want to have any more discussion or any good jokes or anything like that?

MR. KELLY: John Kelly for the record. No, sir, not this morning. Sorry.

THE HEARING EXAMINER: All right. Darn. Okay, Nick, you did a great job for your client. Nice work. I'll look for your picture last time. I didn't notice it last time.

I think I have all the information I need. I want to thank everyone that's been here. I want to thank the folks that provided no objection letters. I sincerely want to thank the gentleman at 699 West Palm Avenue for taking the time to participate and offer additional information; that gave the Applicant an opportunity to also provide more information. All that information is important for me to be able to take in apply it to the criteria that has to be applied to and then render a decision within 30 days.

Anything else before I close this matter out? Okay. All right, so I'm closing this matter out. We will get out a decision as quickly as possible. And once again, I want to thank everyone for being here and it's always been enjoyable being here and seeing everybody. Appreciate it.

Anything else on the agenda? Let's talk about dates. So when we go to November we're talking about -- let's wait for everyone to leave.

MR. BELLOWS: Do you want to do it after the meeting or now?

THE HEARING EXAMINER: Let's do it now. It doesn't hurt to do it on the -- real quickly, I'm bringing up the calendar and the reason we're talking about this because November obviously we've got holidays and then that falls -- that crunches up -- I think this meeting is scheduled for the 18th, am I right or wrong, of November?

MR. BELLOWS: Ray Bellows. You have two dates in November, the 11th and the 25th, and both are holidays.

THE HEARING EXAMINER: One's Veteran's Day and one's Thanksgiving Day, you guys really don't want to be here?

MR. BELLOWS: Just as a fun note, on your October 28th meeting you have about six or seven items on the agenda and if any of those get continued, that would push them into

December.

THE HEARING EXAMINER: So are we talking about the 4th and the 18th; what's your pleasure?

MR. BELLOWS: We're looking for your recommendations. We could do the 10th or the 11th -- the 12th of November.

THE HEARING EXAMINER: Interestingly that's already on my calendar, November 12th. How did you guys do that? Now I'm starting to worry. Okay. Yeah, the -- can't do it on the 11th. Let's just go ahead and do it on the 12th. Let me just double check. Let me get in here, November 12th. Yeah, okay, so I guess somebody has already scheduled it for the 12th, so good for you guys. We'll do it on the 12th.

MR. BELLOWS: (Inaudible).

THE HEARING EXAMINER: Well, somebody must have communicated, or not. Okay, so we're just going to have one meeting in November; is that right?

MR. BELLOWS: That's correct.

THE HEARING EXAMINER: Okay. Great so everyone will bring their leftovers from

Veteran's Day and whatever you want to eat then and then we'll go forward.

All right, so we'll do it on the 12th. Make all the notices proper so that they reflect the

12th and we don't have any issues, okay?

Anything else you want to talk about, public comments, adjourn, any business, new businesses? Okay, So it is now approximately 10:42, we're going to adjourn the meeting. Thank you everyone. Let's get these mics turned off.

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 10:42 a.m.

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COLLIER COUNTY HEARING EXAMINER



ANDREW DICKMAN, HEARING EXAMINER

These minutes approved by the Hearing Examiner on 11/17/21, as presented  or as corrected